Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding Bentall Green Oak
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

On May 27, 2022, an adjudicator appointed pursuant to the *Residential Tenancy Act* (the "Act") adjourned the Tenants' application for dispute resolution to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

On May 26, 2022, an adjudicator appointed pursuant to the *Residential Tenancy Act* (the "Act") adjourned the Tenant's application for dispute resolution to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

> *I find that the landlord's address on the Application for Dispute Resolution by Direct Request does not match the landlord's address listed on the tenancy agreement and all other documents submitted with the Application.*
>
> *I also note that section 12(1)(b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to "be signed and dated by both the landlord and the tenant."*
>
> *I find that the residential tenancy agreement submitted by the tenants is not signed by the landlord, which is a requirement of the Direct Request process.*
>
> *I find these discrepancies raise questions that can only be addressed in a participatory hearing.*

This hearing dealt with the Tenants' application under the Act for:

- return of the security deposit in the amount of $855.00 pursuant to section 38.1; and
- authorization to recover the filing fee from the Landlord pursuant to section 72.

The Tenants and the Landlord's agent AM attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. MY also attended this hearing as a witness for the Landlord.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

AM acknowledged receipt of the Tenants' notice of dispute resolution proceeding package and documentary evidence (collectively, the "NDRP Package). I find the Landlord was served with the NDRP Package in accordance with sections 88 and 89 of the Act.

LF acknowledged receipt of the Landlord's documentary evidence but noted that it was late. LF did not request an adjournment for more time to review the evidence. During the hearing, the parties referred to and discussed the Landlord's evidence. As such, I find the Tenants to have been sufficiently served with the Landlord's evidence pursuant to section 71(2)(c) of the Act.

Preliminary Matter – Adjudicator's Concerns

The parties confirmed the address of the rental unit. Pursuant to section 64(3)(c) of the Act, I have corrected the rental unit address on the application. I find that this resolves the first concern raised by the adjudicator in the interim decision dated May 27, 2022 (the "Interim Decision").

The parties agreed that there was a signed tenancy agreement, and a fully signed copy has been submitted into evidence. I find this resolves the second concern raised by the adjudicator in the Interim Decision.

Issues to be Decided

1. Are the Tenants entitled to the return of the security deposit?
2. Are the Tenants entitled to reimbursement of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on November 20, 2020 and ended on March 31, 2022. The Tenants paid a security deposit of $1,200.00. LF testified that of the two Tenants on the tenancy agreement, only LF's son RF lived at the rental unit during the tenancy.

The parties completed a move-in inspection on November 20, 2020, and a move-out inspection on March 31, 2022. Copies of the signed condition inspection report have been submitted into evidence.

Part V of the signed condition inspection report contains a list of authorized deductions from the security deposit along with RF's signature beneath the following statement:

> *I agree with the amounts noted above and authorize deduction of Balance Due Landlord from my Security Deposit and/or Pet Damage Deposit. I further agree to pay the Landlord for the amount by which the Balance Due Landlord exceeds the amount of by deposit(s).*

On the copy of the condition inspection report submitted by the Tenants, the "Balance Due Landlord" is $830.00 and the "Balance Due Tenant" is $370.00. The $830.00 balance due to the Landlord consists of $200.00 for "Other Cleaning", $330.00 for "Painting" and $300.00 for "Damage Repair/Replacement" ("bifold door" and "light switches").

On the Landlord's copy of the condition inspection report, the "Balance Due Landlord" has been changed to $855.00 and the "Balance Due Tenant" changed to $345.00, due to the inclusion of additional $25.00 deduction for "Unpaid Rent/Late Fees" on this copy.

AM testified the Landlord charged a $25.00 NSF fee because the Tenants' March rent payment had bounced. AM acknowledged that this $25.00 charge was not on the condition inspection report when it was signed by RF. AM acknowledged that the report was later modified. AM stated that this was done so the Landlord's accounting department could process the return of the $345.00 balance to the Tenants.

AM stated that the Landlord did not make an application to retain the security deposit because RF had signed the condition inspection report consenting to the $830.00 deduction. AM acknowledged the Landlord did not repay or make an application regarding the $25.00 not authorized in writing by either of the Tenants.

It is not disputed that the Landlord returned $345.00 of the security deposit to the Tenants via cheque. The Tenants' evidence includes a cheque sub from the Landlord dated April 5, 2022.

LF argued that RF had signed the condition inspection report under duress, at the direction of a cleaner hired by the Tenants. LF testified that RF had a previous workplace accident that resulted in brain damage. LF stated that RF was distraught during the move-out inspection and was told by the cleaner to sign the condition inspection report and appeal it afterwards. LF stated he would have rather had RF call him so LF could speak with the Landlord's agents.

LF testified that the Tenants had hired a cleaner for $500.00 to clean the rental unit on the move-out day at 12:30 pm. LF stated the cleaners were a little late. LF stated that the Landlord's agents dismissed the Tenants' cleaner at around 1:00 pm and charged the Tenants again for cleaning. LF argued that the Landlord assumed responsibility for cleaning by dismissing the Tenants' cleaners. LF stated that RF had talked to the Landlord's maintenance person, MY, had told RF that it was fine for the Tenants' cleaners to still be there. The Tenants submitted word documents said to have been provided by the Tenants' cleaners, which describe the conditions of the rental unit during the move-out inspection and the cleaners' disagreement with the Landlord's assessment of the unit.

LF argued that there is nothing in the tenancy agreement which requires the Tenants to pay for painting. LF stated that there was evidence of water infiltration in the rental unit. LF argued that the Tenants cannot be expected to pay for structural defects or wear and tear.

LF testified that he changed some switches and receptacles in the rental unit and is licensed to do so. LF denied that the switches in the rental unit were cracked. LF stated that the original switches in the rental unit were of inferior quality. LF testified that he had inspected the rental unit the night before the inspection. LF stated that he did not see any hole on the doors.

LF argued that there was no evidence that the Landlord had performed any of the work stated on the condition inspection report.

AM testified that she had informed EF via email that the Tenants would be charged based on the condition of the rental unit when the Landlord's agents arrived. AM testified that the parties had agreed to do the inspection at 12:30 pm.

AM testified that when RF reported water issues in the rental unit in January 2022, MY had followed up with RF but did not receive responses to his emails dated January 7 and 13, 2022. AM stated that RF responded on March 2, 2022 to say that he was feeling under the weather and didn't want anyone to come in. AM stated that RF did not let the Landlord's agents in to see if they could fix the issues RF had mentioned.

AM testified that the rental unit still required a lot of cleaning when she attended for the move-out inspection. AM testified that there was black soot above the radiator due to curtains hung by RF. AM stated that there were holes in the walls above normal wear and tear that required painting. AM testified that there was a hole punched through the bifold door which needed to be replaced. AM stated that the light switches were cracked as if someone had used excessive force, and the thermostat had blue putty inside to hold it back to the wall components due to having been broken. AM stated that all rooms and the floors required cleaning. AM referred to photographs of the rental unit taken during the move-out inspection.

AM denied that RF had signed the condition inspection report under duress. AM stated the Tenants' cleaner was "agitated", and jumped in at times to give "his two cents" when AM pointed out what to clean. AM confirmed that she attended the inspection with MY and JP, the Landlord's community administrator.

MY testified that there was patching and painting work done in the rental unit after the tenancy ended. MY testified that there were hairline cracks in the switches and two or three had to be replaced. MY stated that there was black smoke above the radiator which is a direct result of hanging heavy drapes over the baseboard heaters. MY

testified that the Tenants did not put in a work order regarding the thermostat and that he would have replaced a broken thermostat instead of using blue putty. MY denied that he or another maintenance technician arranged move-outs with tenants. MY testified that he attends move-out inspections only to provide quotes on the maintenance required.

MY described RF as being in a general mood of stress from moving. MY stated that with the cleaners on site, RF said “okay, whatever” and signed the condition inspection report. MY denied having spoken with RF about scheduling.

RF confirmed that the light switches would break and had to be replaced. RF denied having damaged the thermostat. RF testified that when he found out the cleaners would be late, he talked to MY who said it would be fine. RF stated that he had curtains but they did not go right to the ground and he did not believe they were over the heaters. RF stated that he complained to the Landlord about the water infiltration but does not remember whether it was fixed.

RF described the Landlord’s agent as “rude”, “unprofessional”, and “bossy” during the inspection. RF stated that he felt “intimidated”. RF testified that the cleaners were willing to finish cleaning but were kicked out.

Analysis

Section 38(1) of the Act states:

> **Return of security deposit and pet damage deposit**
> 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38.1(1) of the Act states:

> **Order for return of security and pet damage deposit**
> 38.1(1) A tenant, by making an application under Part 5 [*Resolving Disputes*] for dispute resolution, may request an order for the return of an amount that is double the portion of the security deposit or pet damage deposit or both to which all of the following apply:
>
> (a) the landlord has not applied to the director within the time set out in section 38 (1) claiming against that portion;
>
> (b) there is no order referred to in section 38 (3) or (4) (b) applicable to that portion;
>
> (c) there is no agreement under section 38 (4) (a) applicable to that portion.
>
> (2) In the circumstances described in subsection (1), the director, without any further dispute resolution process, may grant an order for the return of the amount referred to in subsection (1) and interest on that amount in accordance with section 38 (1) (c).

Section 38(6) of the Act further states that if a landlord does not comply with section 38(1), the landlord (a) may not make a claim against the security deposit or any pet damage deposit, and (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, I do not find the Tenants to have extinguished their rights to the return of the security deposit under sections 24(1) or 36(1) of the Act, since move-in and move-out inspections had been completed. I also do not find the Landlord to have extinguished its rights under sections 24(2) and 36(2) of the Act, as I find the Landlord to have provided the Tenants with copies of the condition inspection report for move-in and move-out.

I find RF provided the Tenants' forwarding address on the condition inspection report during the move-out. As such, I find the Landlord was served with the Tenants' forwarding address in writing on March 31, 2022, in accordance with section 88(b) of the Act.

Residential Tenancy Policy Guideline 17. Security Deposit and Set Off ("Policy Guideline 17") further states that "Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the

arbitrator will order the return of double the deposit". I find the Tenants have not specifically waived the doubling provisions of the Act.

Under section 38(4)(a) of the Act, a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. Therefore, I find the Tenants are entitled to recovery of double the security deposit subject to any amounts which they have agreed in writing for the Landlord to retain.

It is undisputed that RF had signed the move-out inspection report which includes a statement authorizing the Landlord to deduct $830.00 from the security deposit. I note the Landlord's copy of this report was later modified, but it is not disputed that the copy submitted by the Tenants reflects what was originally signed by the parties. Therefore, I do not find anything in this application to turn on the Landlord's altered copy.

The Tenants argue that RF had signed the condition inspection report authorizing the $830.00 deduction under duress. Duress involves coercion of the consent or free will of the party entering into a contract. To establish duress, it is not enough to show that a contracting party took advantage of a superior bargaining position; for duress, there must be coercion of the will of the contracting party and the pressure must be exercised in an unfair, excessive or coercive manner: *Lei v. Crawford*, 2011 ONSC 349 at para. 7, as cited in *Jestadt v. Performing Arts Lodge Vancouver*, 2013 BCCA 183.

Based on the evidence presented, I am not satisfied that RF had signed the statement authorizing the $830.00 deduction under duress. I find there is insufficient evidence of coercion, including any threats or force that was used to compel RF to sign the report. I find RF was unhappy about the charges but had voluntarily signed Part V of the report twice (agreeing to the condition of the rental unit and agreeing to the $830.00 deduction) in order to get the inspection over with. I find RF could have left the inspection without signing the security/pet damage deposit statement in Part V of the report. To the extent that RF may have received incorrect advice from the Tenants' cleaner about disputing the deductions later, I find RF to still have signed voluntarily. I do not find the evidence to show that the Landlord's agents or the Tenants' cleaners had exerted "pressure" on RF that was "exercised in an unfair, excessive or coercive manner".

I find the Tenants have not submitted any corroborating evidence to explain RF's previous workplace injury and the effects, if any, on RF at the time that he signed the

report. Therefore, I am unable to find that RF lacked legal capacity to consent to the deductions by signing the report.

Based on the foregoing, I conclude the Tenants have agreed in writing for the Landlord to deduct $830.00 from their security deposit under section 38(4)(a) of the Act.

Policy Guideline 17 provides the following example calculation for the return of deposits where the tenant has agreed to a partial deduction:

> Example C: A tenant paid $400 as a security deposit. The tenant agreed in writing to allow the landlord to retain $100. The landlord returned $250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained $50 without written authorization.
>
> The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is $350 ($400 - $100 = $300 x 2 = $600 less amount actually returned $250).

I find the Landlord returned $345.00 to the Tenants within 15 days of receiving the Tenants' forwarding address, instead of the full remaining balance of $370.00 (or $1,200.00 - $830.00 = $370.00). Therefore, I conclude the Landlord must pay the Tenants $395.00, which is double the amount that remained after the Tenants' authorized reduction less the amount actually returned by the Landlord (or 2 x $370.00 - $345.00 = $395.00).

The interest rate on deposits from 2020 to 2022 has been 0% per annum, and 1.95% per annum in 2023. According to Policy Guideline 17, interest is calculated on the original security deposit amount, before any deductions are made, and is not doubled. Therefore, using the Residential Tenancy Branch Deposit Interest Calculator online tool, I conclude the Tenants are entitled to $3.33 of interest on their $1,200.00 security deposit from the date the security deposit was paid (November 18, 2020) to the date of this decision, calculated as follows:

> 2020 $1200.00: $0.00 interest owing (0% rate for 12.02% of year)
> 2021 $1200.00: $0.00 interest owing (0% rate for 100.00% of year)
> 2022 $1200.00: $0.00 interest owing (0% rate for 100.00% of year)
> 2023 $1200.00: $3.33 interest owing (1.95% rate for 14.24% of year)

Pursuant to sections 38(6) and 38.1 of the Act, I order the Landlord to pay the Tenants $398.33 for the return of the security deposit with interest (or $395.00 + $3.33).

2. Are the Tenants entitled to recover the filing fee?

The Tenants have been partially successful on this application. I award the Tenants recovery of their filing fee under section 72(1) of the Act.

The Monetary Order granted to the Tenants for the total amount awarded in this decision is calculated as follows:

Item	**Amount**
Return of Double the Unauthorized Portion of the Security Deposit Less Amount Actually Returned (2 x $370.00 - $345.00)	$395.00
Interest on the Security Deposit	$3.33
Filing Fee	$100.00
Total Monetary Order for Tenants	**$498.33**

Conclusion

The Tenants' claim for return of the security deposit is partially successful. The Tenants' claim for reimbursement of the filing fee is granted. Pursuant to sections 38, 38.1, and 72 of the Act, I grant the Tenants a Monetary Order in the amount of **$498.33**. This Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court, and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 21, 2023

Residential Tenancy Branch